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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,081	10/31/2003	Boaz Carmeli	IL920030027US1	1840

7590 04/07/2009  
Stephen C. Kaufman  
IBM CORPORATION  
Intellectual Property Law Dept.  
P. O. Box 218  
Yorktown Heights, NY 10598

EXAMINER
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MEW, KEVIN D

ART UNIT	PAPER NUMBER
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2416

MAIL DATE	DELIVERY MODE
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04/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,081	<b>Applicant(s)</b> CARMELI ET AL.	
	<b>Examiner</b> Kevin Mew	<b>Art Unit</b> 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18, 19 and 21 is/are allowed.
- 6) ☒ Claim(s) 13 is/are rejected.
- 7) ☒ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Detailed Action***

***Response to Amendment***

1. Applicant's Remarks/Arguments filed on 3/2/2009 have been considered. Claims 1-12 have been withdrawn and claim 20 has been canceled by applicant. Claims 13-19, 21 are currently pending.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rajkumar et al. (USP 7,391,769) in view of Li (USP 7,409,460).

Regarding claim 13, Rajkumar discloses a method for a transmitting network device (transmitter 100, Fig. 1A) to minimally delay transmission of short messages, the method comprising:

adjusting the size of aggregated data packets (adjusting the size/number of packets per aggregate packets, col. 6, lines 33-45, col. 2, lines 53-56, col. 5, lines 36-49) based at least on network congestion (based on system loading which gives an indication on how close the system is reaching its capacity, col. 6, lines 2-16, 24-37, col. 5, lines 36-45).

Rajkumar may not explicitly show transmitting partially aggregated data packets when said transmitting network device has no fully aggregated packets waiting to be transmitted.

However, Li teaches transmitting partially aggregated packets (some of the packets that have enough tokens for transmission are aggregated in the virtual outgoing packet flow 510, col. 10, lines 24-30, col. 7, lines 19-31) when the transmission device (when processing card 114 comprising the combination of processing units, Figs. 1, 5, 9) has no fully aggregated packets waiting to be transmitted (do not have all packets having enough tokens to be aggregated for transmission in the virtual outgoing packet flow, col. 10, lines 33-40, 50-58, col. 7, lines 19-31).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the packet transmission method of Rajkumar the with the teaching of Li in showing some of the packets that have enough tokens for transmission are aggregated in the outgoing data packet flow when the combination of processing units do not have all packets having enough tokens to be aggregated for transmission in the outgoing data packet flow such that the transmitter of Rajkumar will show transmitting partially aggregated data packets when said transmitting network device has no fully aggregated packets waiting to be transmitted.

The motivation to do so is to use tokens to properly control the rate of flow of data packets.

*Allowable Subject Matter*

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3. Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18-19, 21 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

In claim 14, a method according to claim 13 and wherein said adjusting comprises:

selecting fully aggregated packets from said pending queue or partially aggregated packets from said buffer depending on whether or not said pending queue is empty.

In claim 18, a method for a transmitting network device to minimally delay transmission of short messages, the method comprising:

selecting fully aggregated packets from said pending queue or partially aggregated packets from said buffer depending on whether or not said pending queue is empty.

### ***Response to Arguments***

4. Applicant's Remarks/Arguments on page 2, paragraph 3 with respect to amended claim 13 have been considered but are moot in view of a new ground(s) of rejection. Applicant's Remarks/Arguments on page 2, paragraphs 5-8, page 3, paragraph 1 with respect to the 35 USC § 101 rejection of amended claims 13-19, 21 have been considered and the 35 USC § 101 rejection has been withdrawn.

### ***Conclusion***

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Mew whose telephone number is 571-272-3141. The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. M./

Examiner, Art Unit 2416

/Chi H Pham/

Supervisory Patent Examiner, Art Unit 2416

4/2/09

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